

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ROBERT KLECKLEY,

Petitioner-Appellant,

v.

STATE OF FLORIDA,

Respondent-Appellee.

On Appeal from the United States District Court
for the Southern District of Florida
No. 0:19-cv-62972-RKA (Hon. Roy K. Altman)

**APPELLANT'S NOTICE OF INTENT TO FILE AN APPLICATION FOR A
CERTIFICATE OF APPEALABILITY**

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Counsel for Appellant Robert Kleckley

**CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rules 26.1-1(a)(1) and 26.1-2(c), Appellant Robert Kleckley, through undersigned counsel, hereby submits this Certificate of Interested Persons and Corporate Disclosure Statement.

Mr. Kleckley states that he is not a corporation, does not have a parent corporation, nor has he issued shares or debt securities to the public. Mr. Kleckley is not a subsidiary or affiliate of any publicly owned corporations.

I hereby certify that the following have an interest in the outcome of this appeal:

1. Altman, Honorable Roy K., *District Court Judge*
2. Arnold & Porter Kaye Scholer LLP, *Attorneys for Appellant*
3. Bidwill, Honorable Martin J. (17th Circuit Judge)
4. Bober, Honorable Bernard I. (17th Circuit Judge)
5. Bondi, Pamela Jo ([former] Attorney General)
6. Buschel, Robert C. (Appellate Counsel)
7. Butterworth, Robert A. ([former] Attorney General)
8. Chloupek, Joseph (Assistant Public Defender)
9. Ciklin, Honorable Corey J. (Fourth District Judge)
10. Cohn, Honorable James I. (U.S. District Judge [former 17th Cir. Judge])

11. Conner, Honorable Burton C. (Fourth District Judge)
12. Crist, Charlie ([former] Attorney General)
13. Edwards, K. (witness)
14. Egber, Mitchell A., *Attorney for Appellee*
15. Farmer, Honorable Gary M. ([former] Fourth District Judge)
16. Florida Office of Attorney General, *Attorneys for Appellee*
17. Gardiner, Honorable Ana ([former] 17th Circuit Judge) – Disbarred
18. Gerber, Honorable Jonathan D. (Fourth District Judge)
19. Gorman, James (witness)
20. Gross, Honorable Robert M. (Fourth District Judge)
21. Gunther, Honorable Bobby W. ([former] Fourth District Judge)
22. Haughwout, Carey (Public Defender)
23. Hazouri, Honorable Fred A. ([former] Fourth District Judge)
24. Holden, Peter ([former] Assistant State Attorney)
25. Hugentugler, Susan Odzer ([former] Assistant State Attorney)
26. Jones, R. Stanton, *Attorney for Appellant*
27. Jorandby, Richard L. ([former] 15th Circuit Public Defender)
28. Kleckley, Kimberly (witness)
29. Kleckley, Robert, *Petitioner-Appellant*
30. Klein, Honorable Larry A. ([former] Fourth District Judge)

31. Kuntz, Honorable Jeffrey T. (Fourth District Judge)
32. Lipson, Alan T. ([former] Assistant Public Defender)
33. Louis, Honorable Lauren Fleischer, *Magistrate Judge*
34. Major, Sheila (witness)
35. May, Honorable Melanie G. (Fourth District Judge)
36. McHugh, Dennis (Trial Counsel)
37. Mielke, Thomas C. ([former] Assistant Attorney General)
38. Moody, Ashley (Attorney General)
39. Nelson, Ava (witness)
40. Polen, Honorable Mark E. ([former] Fourth District Judge)
41. Raft, J. Scott (Assistant State Attorney)
42. Rebollo, Honorable Carlos S. (17th Circuit Judge [former Assistant
State Attorney])
43. Reid, Honorable Lisette M., *Magistrate Judge*
44. Rich, M.S. (witness)
45. Rodriguez, Miguel (victim/witness)
46. Sandler, Sarah W. (Assistant Public Defender)
47. Satz, Michael J. ([former] State Attorney)
48. Schreiber, Alan H. ([former] Public Defender)
49. Sharon, William T., *Attorney for Appellant*

- 50. Smith, Neva (Assistant State Attorney)
- 51. State of Florida, *Respondent-Appellee*
- 52. Stevenson, Honorable W. Matthew ([former] Fourth District Judge)
- 53. Stone, Honorable Barry ([former] Fourth District Judge)
- 54. Taylor, Honorable Carole Y. ([former] Fourth District Judge)
- 55. Tutt, Andrew T., *Attorney for Appellant*
- 56. Warner, Honorable Martha C. (Fourth District Judge)
- 57. Worthy, Anesha, *Attorney for Appellee*

Dated: May 22, 2023

Respectfully submitted,

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Counsel for Appellant Robert Kleckley

**APPELLANT’S NOTICE OF INTENT TO FILE AN APPLICATION FOR A
CERTIFICATE OF APPEALABILITY**

Appellant Robert Kleckley respectfully gives notice that, on or before July 1, 2023, he intends to move this Court for a Certificate of Appealability (“COA”) on up to four additional issues: (1) whether his counsel was constitutionally ineffective for failing to advise him of a conflict of interest at resentencing, (2) whether his counsel was constitutionally ineffective for failing to cross examine the State’s witnesses at resentencing, (3) whether his counsel was constitutionally ineffective for failing to call Dorothy Jones as a witness at resentencing, and (4) whether his due process rights were violated when the court imposed a “habitual felony offender” enhancement at resentencing.

The district court denied a COA on these issues. First, despite assuming that Kleckley’s counsel at resentencing had “an actual conflict of interest,” the court concluded that this conflict did not “adversely affect[] counsel’s representation.” *Kleckley v. Fla.*, No. 19-CV-62972 (RKA) (S.D. Fla. Oct. 20, 2022), Dkt. 28 at 8. Second, the court reasoned that counsel’s failure to cross examine the State’s witnesses at resentencing did not prejudice Kleckley because they “offered no factual details that could be rebutted or challenged on cross-examination.” *Id.* at 12. Third, the court concluded that counsel’s failure to call Dorothy Jones as a witness did not prejudice Kleckley because her testimony would have been cumulative. *Id.*

at 13. Finally, the court held that Kleckley did not suffer a due process violation because “the state court gave Kleckley a fair shot at resentencing.” *Id.* at 16.

On April 24, 2023, Kleckley independently filed a motion to expand the COA to include these four issues. *See* Dkt. 18. The Court noted that no action will be taken on Kleckley’s independent motion because he is represented by counsel. *See* Dkt. 20. Pro bono counsel have spoken with Kleckley and will prepare a motion to expand the COA on his behalf.

Appellant’s opening brief is due on July 31, 2023. Pro bono counsel hereby notify the Court that Kleckley intends to move to expand the COA on or before July 1, 2023.

Dated: May 22, 2023

Respectfully submitted,

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Counsel for Appellant Robert Kleckley

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Intent to File an Application for a Certificate of Appealability was filed electronically on May 22, 2023 and will therefore be served electronically upon all counsel.

/s/ William T. Sharon

William T. Sharon

Counsel for Appellant Robert Kleckley